

APR 06 2007

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Jay Paul White  
Application Serial No.: 09/338,744  
Filing Date: June 23, 1999  
Title: GLOBAL POSITIONING SYSTEMS APPLICATIONS  
Art Unit: 2736  
Docket No.: 16-647  
Examiner: Lee, B.

<p>Amella Au 571-273-8300 Office of Petitions Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450</p>	<p><b>Certificate of Facsimile</b> I hereby certify that this paper is being transmitted today via facsimile transmission to the United States Patent and Trademark Office at 571-273-8300, Office of Petitions-Attn: Amella Au On: 4-6-07 By: <i>Amelia A. Pattem</i></p>
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**PETITION UNDER 37 C.F.R. § 1.181(a) TO WITHDRAW  
HOLDING OF ABANDONMENT**

Dear Madam:

This Petition is being filed at the request of the Office of Petitions to supplement the Petition Under 37 C.F.R. § 1.181(a) to Withdrawal Holding of Abandonment filed on or about January 27, 2005 and entered on or about January 31, 2005. The original Petition was unsigned and, to date, has not been acted on by the Office of Petitions.

Petitioner and assignee, Symbol Technologies Inc. ("Petitioner"), respectfully requests that the holding of abandonment of U.S. Patent Application No. 09/338,744 (the '744 application) be withdrawn and the '744 application be reinstated as a pending application. A Notice of Abandonment was issued in the '744 application on November 30, 2004. The abandonment of the '744 application apparently was due to the failure of the Applicant to take any action in response to a decision of the Board of Patent Appeals and Interferences. However, the Applicant's failure to respond to the Board's

decision was a result of the attorney of record not receiving the Decision due to error on part of the Patent Office. Since the issuing of the Notice of Abandonment was due to an error on the part of the Patent Office, no fee is believed to be required for this petition. However, in the event that a fee is required, the Patent Office is authorized to deduct any required fees from Deposit Account No. 20-0090.

### Facts

On or about April of 2004 Petitioner requested that Watts Hoffman Co., L.P.A. (hereinafter "Watts") take over representation of certain pending patent applications filed by another law firm on behalf of Petitioner. Upon receipt of certain files corresponding to applications pending before the Patent and Trademark Office, Watts entered the necessary information for each application into its docketing system. In particular, the information for pending U.S. Application No. 09/338,744 was entered. A printout of the entered information is attached as Exhibit 1. As a matter of procedure at Watts, when correspondence is received in a pending application, data is entered into the docketing system noting necessary due dates for any responses. In the case of the '744 application, there were no necessary due dates to enter into the docketing system as the Petitioner was waiting for a decision from the Board on an appeal filed by the law firm that filed the application on behalf of Petitioner.

On May 6, 2004 a Revocation and Power of Attorney was filed in '744 application revoking the power of the previous representative and appointing Watts as the power of attorney. A copy of the filed Revocation and Power of Attorney is attached as Exhibit 2. Exhibit 3 is a copy of the return postcard indicating that the Patent Office received the Revocation and Power of Attorney on May 10, 2004. On November 30, 2004, a Notice of Abandonment (Exhibit 4) was issued by the Patent Office stating that the '744 application was abandoned because the period for seeking court review of the decision from the Board had expired. According to the Notice of Abandonment, the Board's decision was issued on July 30, 2004. The Board's decision was never received by Watts. As indicated on the Notice of Abandonment, the correspondence address for the '744 application is still that of the previous representative. Watts became aware of the

Notice of Abandonment referencing the Board's decision on or about December 7, 2004 and initiated the present petition. Upon being told of the Notice of Abandonment, the undersigned carefully reviewed the file jacket and the docketing system, neither of which indicate that a decision from the Board of a Notice of Abandonment was received by Watts.

### Remarks

Petitioner hereby petitions to have the holding of abandonment of the '744 application withdrawn. The petitioner's current representative, Watts, did not receive the decision from the Board. As the facts indicate, Watts filed a Revocation and Power of Attorney appointing them as the Petitioner's representative on May 6, 2004. The Notice of Abandonment was sent on November 30, 2004 to the Petitioner's prior representative. The Notice of Abandonment states that the application went abandoned for failure of the Applicant to seek court review of the Board's decision of July 30, 2004. Once the undersigned received notice of the abandonment, an inspection of Watts' filed for the '744 application and docket system was conducted. No evidence of a Board decision or Notice of Abandonment was discovered. Further, the Notice of Abandonment is addressed to the Petitioner's prior representative and was in fact received by the prior representative as indicated by the "RECEIVED" stamp on the front page (See Exhibit 4).

The patent office erred in sending any correspondence to the prior representative subsequent to receipt of the Revocation and Power of Attorney. The Patent Office had ample time (over two months) to change the correspondence address from the time the Revocation and Power of Attorney was filed to the date the Board decision was issued. Because the Petitioner's current representative was the appointed representative at the time the Board decision was issued and did not receive the decision from the Board, under Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971), a withdrawal of the abandonment of the '744 application is clearly in order. See MPEP 711.03(c).

In September of 2006, the attorneys of Watts Hoffman Co., L.P.A. joined Tarolli, Sundheim, Covell & Tummino L.L.P. Applicant has concurrently filed an appropriate change of correspondence form.

Petitioner respectfully requests that the Notice of Abandonment be withdrawn and the decision of the Board of July 30, 2004 be reissued to Petitioner's current representative setting an appropriate time for the Petitioner to take any necessary actions. If this Petition is granted, Petitioner intends to file a Request for Continued Examination of the present application

Respectfully submitted,

Date: 4/6/07



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FILE NO.	TITLE	TYPE	STATUS	COUNTRY	SERIAL NO.	FILING DATE
16-647	GLOBAL POSITIONING SYSTEMS...	P	P	US	09/338744	06-23-1999

Report Completed On 01-26-2005 at 10:15:01

**EXHIBIT 1**

PAGE 5/8 \* RCVD AT 4/6/2007 12:49:33 PM [Eastern Daylight Time] \* SVR:USPTO-EFXRF-5/20 \* DNIS:2738300 \* CSID:216 241 8151 \* DURATION (mm:ss):02:02

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## PATENT APPLICATION

Applicant(s): Jan Paul White Attorney Docket No.: 10-647  
 Title: Health Monitoring System Application Client: 2858  
 Serial No.: 697398 Filed: 4/2/07 Patent No.:  
 Mailing Date: 5/10/07 Initials: 28  
 Receipt is hereby acknowledged of the following:

<input type="checkbox"/> Transmittal (____ pages)	<input type="checkbox"/> Assignment(s) (____ pages)
<input type="checkbox"/> Provisional Application (or Patent Cover Sheet)	<input type="checkbox"/> Assignment Cover Sheet(s) (____ pages)
<input type="checkbox"/> Request for Filing a Patent Application under 37 CFR 1.53 (b) (____ pages)	<input type="checkbox"/> Small Entity Statement (____ pages)
<input type="checkbox"/> Request for Filing a Patent Application under 37 CFR 1.53 (d) (____ pages)	<input type="checkbox"/> Number of Priority Document(s)
<input type="checkbox"/> Patent Application (____ total pages)	<input type="checkbox"/> Response to Notice to File Missing Parts (____ pages)
<input type="checkbox"/> Provisional, <input type="checkbox"/> New Nonprovisional	<input type="checkbox"/> Copy of Notice to File Missing Parts Form PTO-1533
<input type="checkbox"/> Continuation, <input type="checkbox"/> Divisional, <input type="checkbox"/> CIP	<input type="checkbox"/> Information Disclosure Statement (____ pages)
<input type="checkbox"/> PCT, <input type="checkbox"/> _____	<input type="checkbox"/> PTO Form 1449 (____ pages)
____ cover page	<input type="checkbox"/> Number of Documents
____ pages of specification	<input type="checkbox"/> Petition for a Month Extension of Time
____ pages of number of claims	<input type="checkbox"/> Preliminary Amendment (____ pages)
____ pages of abstract	<input type="checkbox"/> Amendment (____ pages)
<input type="checkbox"/> Drawings (____ sheets)	<input type="checkbox"/> Notice of Appeal (____ pages)
<input type="checkbox"/> Declaration(s) with Power of Attorney (____ pages)	<input type="checkbox"/> Appeal Brief in Triplicate (____ pages each)
<input type="checkbox"/> Check(s) in Amount of \$ _____	<input type="checkbox"/> Issue Fee Transmittal PTOL-85B & Copy
<input type="checkbox"/> <u>Revocation &amp; Power of Attorney</u>	<input type="checkbox"/> Maintenance Fee Transmittal (____ pages)
<input type="checkbox"/> _____	<input type="checkbox"/> Request for Continued Examination
<input type="checkbox"/> _____	

EXHIBIT 3

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## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/338,744	06/23/1999	JAY PAUL WHITE	04873/056002	1778
26161 7390 11/30/2004				
FISH & RICHARDSON PC 225 FRANKLIN ST BOSTON, MA 02110				
EXAMINER LEE, BENJAMIN C				
ART UNIT 2632 PAPER NUMBER				

RECEIVED

DEC 02 2004

FISH & RICHARDSON, P.C.  
BOSTON OFFICE

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

GRL

Please forward:

Handled
Reviewed By Practice Systems
603
Reviewed By Licensing Secretary
Initials